section 31 as covering any gainful occupation. And in so far as English authorities can be relied upon in construing our Ordinance I think the case of *Davies v. Braithwaite*[1] is against the appellant's contention. The wording of our section is very close to that of Schedule D to the English Act (the wording there is "trade, profession, employment or vocation") and quite different from the wording of Schedule E (the wording there is "every person having or exercising an office or employment of profit mentioned in this Schedule"). Following the decision of Rowlatt J. therefore, I think the word "employment" when used, as it is, in section 31 in connection with a profession or vocation means the way in which a man employs or occupies himself. The way in which an advocate and solicitor employs or occupies himself is by practising his profession and it appears to me that he is employing himself in this manner just as much if his remuneration is by way of salary paid to him by a firm as if it is by way of sharing profits in a partnership. In both cases he is practising his profession; and that is the way in which a partner, just as much as an assistant is, in the ordinary natural meaning of that word, employed. To paraphrase the words of Rowlatt J. quoted earlier in this judgment, I think that whatever he does and whatever contracts he makes are nothing but incidents in the conduct of his professional career.

It seems to me that the same words must be construed in sub-section (3) in the same way. Mr. Pooley has suggested that sub-section (3) applies only to those cases where a person first starts in life in some profession, trade or occupation and that his liability to income tax continues throughout his working life until it is put an end to under the provisions of sub-section (5). I do not think it is necessary to go as far as this for it seems to me that sub-section (3) would apply to someone who actually changed his profession. I think it is sufficient to say that under sub-section (3) when an advocate and solicitor practising in the Courts under a practising certificate changes his status from that of an assistant employed by a firm and becomes a partner in the firm he has not, in my view, "commenced to carry on or exercise" a profession or employment when he enters into partnership for he was already exercising that profession or employment before he became a partner.

I am of opinion that the decision of the Board of Review was correct. The appeal is, therefore, dismissed and, as I understand there has been an agreement between the parties regarding costs, there will be no order as to costs.

Appeal dismissed.

Solicitors: *Presgrave & Matthews.*

PUBLIC PROSECUTOR v. NIK SOH

[Cr.R.J. (Rigby J.) February 6, 1956]

[Kota Bharu — Criminal Revision No. 5 of 1956]

Criminal Procedure Code (Cap. 6) — Jurisdiction — The issue of jurisdiction must be decided on the face of the charge as it stood before the Court.

In this case the respondent was charged before the learned Magistrate with an offence under s.193 of the Penal Code. The charge was that on May 10, 1955, in the course of a police investigation under s.112 of the Criminal Procedure Code, the respondent made a statement to a police officer and that on August 1, 1955 at the Magistrates' Court, he made a contradictory statement in the course of the judicial proceeding, and that one of those statement he either knew or believed to be false or did not believe to be true. The first branch of s.193 of the Penal Code which deals with a person giving false evidence in any stage of a judicial proceedings provides for a maximum sentence of 7 years and is therefore beyond the jurisdiction of a Magistrate. The learned Magistrate in this case heard the case and found that the false statement was the one made to the police officer.

Held: the issue of jurisdiction must be decided on the face of the charge and in this case on the face of the charge the Magistrate had no jurisdiction and therefore the trial was a nullity.

CRIMINAL REVISION.

Rigby J. : — The respondent in this case was charged before the learned Magistrate, sitting at Kuala Krai, with an offence under section 193 of the Penal Code. The charge was that on 10th May 1955, in the course of a Police investigation under section 112 of the Criminal Procedure Code, the respondent made a statement (the details of which were specified in the charge) to a Police Officer, and that on 1st August 1955 at the Magistrates' Court, Kuala Krai, during the judicial proceeding of Criminal Case : P/KK/163 of 1955 before a Magistrate he made a contradictory statement (the details of which were specified in the charge) and that one of those statements he either knew or believed to be false or did not believe to be true.

A charge laid in the alternative in that manner is, of course, a perfectly valid charge. The learned Magistrate convicted the respondent and fined him $50.

The learned Magistrate based his conviction on the fact that he was satisfied that what the respondent had said in the trial before the Magistrate was true and that the statement that the respondent had given to the Police on 10th May 1955 in the course of the Police investigation under section 112 of the Criminal Procedure Code was false.

In his grounds of judgment the learned Magistrate states :—

"Section 193 of the Penal Code has two branches. The first branch deals with a person giving false evidence in any stage of a judicial proceeding. This is clearly

beyond the jurisdiction of a Magistrate, since the maximum punishment is seven years. The second branch, however, deals with giving false evidence in any other case, which by reason of its maximum punishment of 3 years is clearly falling under the jurisdiction of a Magistrate."

That is a perfectly correct statement of the law.

He then goes on to say, however :—

"Whether or not I have jurisdiction to try the present case depends upon whether or not a statement made to Police Officer investigating into Manek Urai Report No. 43/55 can be so interpreted as to amount to giving false evidence in any stage of a judicial proceeding. If so, the trial of the present case is totally void *ab initio* for lack of jurisdiction."

The learned Magistrate then goes on to hold, perfectly correctly, that a false statement given in the course of a Police investigation under section 112 of the Criminal Procedure Code is quite distinct from false evidence given "in any stage of a judicial proceeding". He therefore held that the case fell within the second branch of the section involving a maximum punishment of three years' imprisonment and that he, accordingly, had jurisdiction to try the case.

The fallacy of his reasoning lies, however, in the fact that the issue of jurisdiction is one that must be decided on the face of the charge as it stands before the Magistrate. On the face of the charge before the Magistrate, clearly, the respondent had either lied in the course of the Police investigation or perjured himself at the trial before the Magistrate. If the latter, then he was liable to a maximum of seven years' imprisonment, which was outside the jurisdiction of the Magistrate. Clearly, that issue could not be decided until the evidence was heard. On the face of the charge, therefore, the learned Magistrate had no jurisdiction to try the case.

The logical necessity for a Magistrate to decide the issue of jurisdiction on the face of the charge, and before entering into the evidence, is really obvious, and this case provides an admirable illustration for it. Having embarked upon the trial, if the learned Magistrate had come to the conclusion that the statement of the respondent to the Police was true and that his testimony before the Magistrate at the trial was false, he would then have found in the position of deciding that he had no jurisdiction to try the case because it involved a maximum punishment of seven years' imprisonment.

For these reasons I am of the opinion that the trial was a nullity. The learned Magistrate imposed a fine of $50. It is to be observed that, upon conviction for an offence under this section, *some* term of imprisonment is mandatory — unless, of course, the provisions of section 173A or 294 of the Criminal Procedure Code are resorted to.

The conviction and sentence is accordingly set aside, and I direct that the case be sent back for trial by the learned President of the Sessions Court.

Re-trial ordered.

BACHAN SINGH v. MAHINDER KAUR & ORS.

[O.C.J. (Thomson J.) February 7, 1956]

[Ipoh — Originating Summons No. 134 of 1954]

Land Code (Cap. 138), s. 240 — Effect of unregistered transfer of land.

On a valid transfer of property capable of registration under the terms of the Land Code, the purchaser acquires a right in personam to the land which he is entitled to have erected into a right *in rem* by registration. In this case the transfer could not be registered as (a) there had been delay and (b) one of the original transferors had died. The applicant in this case applied to the Court to exercise its powers under s.240 of the Land Code and an order was made under the same section addressed to the Registrar of Titles to the effect that the applicant be registered as proprietor in respect of a share in the land in question.

Cases referred to :—

(1) *Loke Yew v. Port Swettenham Rubber Co.* (1913) A.C. 491; Innes 202.

(2) *Haji Abdul Rahman & Anor. v. Mohamed Hassan* (1917) A.C. 209; 1 F.M.S.L.R. 290.

ORIGINATING SUMMONS.

H. T. Ong for the applicant.

K. C. Chan for the 1st respondent.

Thomson J. (delivering oral judgment) : — In discussing this case I wish to avoid as far as possible the technicalities of the English law relating to trusts and equitable interests.

I do not think I am overlooking anything that was said in the *Port Swettenham Rubber Company* case[1] or *Abdul Rahman's* case[2]. I feel compelled, however, to observe that in my experience a great deal of the difficulty and confusion which sometimes attend actions relating to land in this country arise from the no doubt well-intentioned efforts of counsel to force our local law into conformity with conceptions of the English law which really have very little relevance.

To my mind, many of the difficulties which appear to arise in these cases would not arise if we were to bear in mind throughout the distinction between rights